

(2024) 04 CHH CK 0023
In the Chhattisgarh High Court
Case No : Writ Petition (S) No. 1126 Of 2012

D. S. Thakur

APPELLANT

Vs

State Of Chhattisgarh

RESPONDENT

Date of Decision : 05-04-2024

Acts Referred:

Constitution of India, 1950 — Article 311(2)
Chhattisgarh Civil Services (Pension) Rules, 1976 — Rule 2(n), 3(n), 9, 9(1)
Chhattisgarh Cooperative Societies Act, 1960 — Section 49(8), 49B

Citation : (2024) 04 CHH CK 0023

Hon'ble Judges : Rajani Dubey, J

Bench : Single Bench

Advocate : Prafull N. Bharat, Mayank Chadrakar, Raghvendra Verma, Sudeep Agrawal

Final Decision : Allowed

Judgement

1. The petitioner has preferred the present writ petition praying for the following reliefs:-

- "i. To kindly call for the entire records from the respondents.
- ii. This Hon'ble Court be pleased to set aside the decision/order dated 15/2/2012 passed by the Respondent No. 2 (vide Annexure P/1).
- iii. To kindly make any other order that may be deemed fit and just in the facts and circumstances of the case including awarding of the costs to the petitioner."

2. Brief facts of the case are that the petitioner was initially appointed as Assistant Registrar, Cooperative Societies through the Public Service Commission in the erstwhile State of Madhya Pradesh on 12.02.1982 and was posted at Bilaspur and thereafter he was promoted to the post of Deputy Registrar, Cooperative Societies and was posted at Jagdalpur. Further, the petitioner was prompted as Joint Registrar, Cooperative Societies and was posted as General Manager in the Integrated Co-operative Development Project (ICDP), Sidhi

(M.P.). During the period of his service, the petitioner was transferred to different places and during 2004-2005 and 2005-2006, he was posted as Managing Director of C.G. State Cooperative Bank and from 13/04/2006 he joined as Managing Director of Agricultural and Rural Development Bank, Raipur. While working as Managing Director of the Agricultural and Rural Development Bank, a complaint was made against the petitioner by the Chhattisgarh Co-operative Bank Employees Federation, Raipur. The higher authorities asked for the comments on the complaint so made and the petitioner gave his reply to the said complaint but the aforesaid Employees Federation continued the onslaught on the petitioner and in the complaint, even demanded suspension of the petitioner from service, upon which he was suspended from service vide order dated 26.10.2006. During the tenure as Managing Director of Agricultural Rural Development Bank, Raipur, an amount of Rs.6,73,52,800/- was received from NABARD. The said amount was deposited in the Indira Priyadarshini Mahila Nagrik Sahakari Bank Maryadit, Raipur a primary cooperative Bank. Unfortunately, the financial transactions of the said bank came to a damaging point. Due to this a loss of amount of Rs. 5,77,52,800/- occurred. Meanwhile the petitioner was reinstated from suspension by the order dated 14/11/2007. The Enquiry Report was submitted on 29/8/2011, pursuant to which second Show Cause Notice was served to the petitioner vide letter dated 21/09/2011, where it has been asked that as per the enquiry report petitioner will be demoted and amount will be recovered from the petitioner with interest, with this respect a reply within 7 days has been asked. On 21/9/2011 respondent No.2 sent letter to respondent No.3 to lodge a First Information Report against the petitioner for alleged conduct by which financial loss has been incurred to the State, however no such FIR was lodged. Meanwhile, as to file the reply of the second Show Cause Notice, the petitioner made an application asking the respondents authorities to provide him some important documents, based upon which he can make his reply in effective manner, but no such documents were provided to the petitioner. Surprisingly on 15/2/2012 impugned final order was served to the petitioner, whereby a major punishment of non payment of Pension and Gratuity has been imposed against the petitioner. Hence this petition has been filed by the petitioner.

3. Learned counsel for the petitioner submits that no misconduct has been committed by the petitioner as per the service rules. No allegation of any personal gratification has been made out as per the requirement of penal law. The letter for lodging FIR is totally unwarranted because Departmental Enquiry has not been concluded yet and no case of fraud, embezzlement, misappropriation, cheating in any manner has been made out. The Board of Directors of the Agricultural and Rural Development Bank has already resolved and authorized the Managing Director to open an account in any bank. Therefore the charge that petitioner has not taken approval from the competent authority is nothing but to frame the petitioner. The resolution dated 29/12/2000 passed by the Board of Directors has not been annulled and resolution is still operative

as per Section 49-B of the Co- operative Societies Act, 1960. He further submits that the Presenting Officer of the Departmental Enquiry Commission has also accepted that the petitioner was dully authorized by the Board of Directors and no such financial appropriation has been committed by the petitioner. The decision for depositing the amount in the said Indira Priyadarshini Bank has been taken after making preliminary enquires & conducting the required survey of all the Banks wherein the maximum payable interest was 4.75% and whereas the interest payable in the said Indira Priyadarshini Bank was 5.5%. The said Indira Priyadarshini Bank's general was not tainted as per the various reports of the RBI and the Auditors. The Reserve Bank of India had placed the said Indira Priyadarshini Bank in the Grade-II from Grade-III at the relevant time which itself shoes that the financial health of the said Bank was very good. The note sheet proceeded by department would show that action was taken by the petitioner with bonafide intention. During the Departmental Enquiry, the Presenting Officer has admitted in his submission that there has been no loss caused to the Chhattisgarh Agricultural and Rural Development Bank on account of the act of the petitioner. As per General Book Circular if the departmental enquiry is conducted by an enquiry officer, then the matter shall not be further given for enquiry to the Enquiry Commissioner. In the enquiry report, the Enquiry Officer has not considered the submissions made by the petitioner and Enquiry Officer had not submitted the Enquiry Report keeping in view the evidences that were lead before the Enquiry Officer. The enquiry commissioner has not taken the statements made by the 2 witnesses in its true perspective, as the enquiry commissioner had not considered the statements of the witness Mr. B. P. Sahu. The charges leveled against the petitioner are not clear and no details of the charges are mentioned in the charge sheet. The enquiry report is not based upon the valid documents and evidences. The petitioner had made an application asking the respondents authorities to provide him some important documents, on which he can make his reply in effective manner, but no such documents were provided to the petitioner and final impugned order has been passed in violation of Principles of Natural Justice. Therefore, the writ petition may kindly be allowed.

Reliance has been placed on the judgments rendered by the Hon'ble Supreme Court in the matters of State of Punjab and another vs Iqbal Singh, reported in AIR 1976 SC 667, State of Uttar Pradesh and others vs Saroj Kumar Sinha, reported in (2010) 2 SCC 772, S. N. Narula vs Union of India and others, reported in (2011) 4 SCC 591, S. R. Tewari vs Union of India and another and another connected matter, reported in (2013) 6 SCC 602 and in the matter of Union of India and others vs R. P. Singh, reported in (2014) 7 SCC 340.

4. Learned counsel for the respondents oppose the submission made by the petitioner's counsel and jointly submit that though the Board of Directors of the Chhattisgarh State Agriculture Cooperative and Rural Development Bank, Raipur had authorized the Managing Director for opening a new account in the bank in which the account is already opened or in any other Bank, if it is required. However, when the Managing Director was authorized for opening the new

account, therefore, while opening a new account in any bank, the Managing Director was required to take appropriate care and precautions, but the petitioner has opened a bank account by investing a huge amount in a bank which is a primary cooperative bank. It is very surprising that an apex body of Agriculture and Development Bank has decided to open the bank account in a primary cooperative bank despite the fact that the said bank was already having his bank account in Chhattisgarh State Cooperative Bank, Raipur, in the State Bank of India, Main Branch, Raipur and in the District Central Cooperative Bank, Raipur. Since in the years 2004 to 2006, there was no elected Board of Directors, therefore, the Additional Registrar, Cooperative Societies, Chhattisgarh, Raipur, while exercising the powers conferred under Section 49(8) of the Chhattisgarh Cooperative Societies Act, 1960 appointed Mr. Subrat Sahu, Registrar, Cooperative Societies, Chhattisgarh, Raipur as Officer In Charge for the Bank vide order dated 23/12/2004 and thereafter vide order dated 17/10/2005, Mr. P.C. Dalai, Secretary, Department of Cooperative, State of Chhattisgarh was appointed as Officer In Charge for the said Bank. Thus, it is clear that in the year 2006, the Officer In Charge for the Bank was already there, therefore, prior to taking decision about opening of a bank account in a primary cooperative bank, the petitioner was required to take approval from the Officer In Charge of the Bank. In a managing committee consisting of two members only (particularly nominated/appointed by the Government), all major decisions to manage the affairs of the bank are required to be made with mutual consent of both members of the managing committee. The petitioner's contention that he had taken a decision for opening a new account and depositing the amount in Indira Priyadarshini Mahila Nagarik Sahakari Bank, Raipur on the ground that the interest rate of the said bank was in higher side is not justified, because if it is found that the bank is paying in higher interest rate, there are several other banks in the city who pay much higher rates of interest than the aforesaid bank, but prior to depositing any amount in any bank, the credibility of the bank and the financial status of the bank are required to be enquired. When the Bank was already having three accounts in prominent and reputed banks including the nationalized bank, the petitioner was not required to deposit a huge amount in a primary cooperative bank that too without permission from the Officer In Charge of the Bank. The petitioner opened current a/c on 28/07/2006 and deposited Rs.6,73,52,800-00 with Indira Priyadarshini Mahila Nagrik Sahakari Bank, however no interest is given on current a/c to the depositors by the bank. Hence the petitioner's plea that taking into consideration the higher rate of interest he decided to make deposit with the aforesaid Primary Co- operative Bank seems to be worthless, Only an amount to the extent of 1.03 Crores out of total deposit made with that bank amounting to Rs. 6.74 Crores were transferred from current a/c and deposited on fixed deposit a/c on 29/07/2006 for 15 days, Which infact earns interest and a major part of deposit was kept in current account. Surprisingly after few days from the date of making deposit with that bank by the petitioner, the Indira Priyadarshini Mahila Nagrik Sahakari Bank failed to discharge its liabilities owing to inadequate capital funds, and lack of liquid

assets. The bank had no sufficient funds to meet the demands of its depositors and as a result thereof a cheque amounting to Rs.4,74,52,000-00 issued to the NABARD by the bank on 31/07/2006 got dishonoured and consequently the C.G. State Agricultural and Rural Development Bank sustained heavy loss amounting to Rs.5,77,52,800-00. In addition to this, the petitioner was found to be guilty of default in making payment to the NABARD within due date i.e. 31/07/2006 and subsequently the NABARD imposed penalty on the petitioner's bank up to Rs.46,802-00 which clearly shows the dereliction of duty by the petitioner. Thus, the petitioner has played the misconduct by investing a huge amount in a suspicious circumstances in a bank which is primary cooperative bank. It is unfortunate that an apex bank in the field of agriculture and rural development of the State has deposited/invested such a huge amount Rs. 6.74 crores with primary cooperative bank. Almost one third of total deposit of the aforesaid primary bank despite already having deposit a/c in three pioneer banks. As per audited balance sheet (Annexure P/8), total deposit of the said bank as on 31/03/2005 was Rs. 20.07 crores only. As per R.B.I. inspection report (Annexure P/9), the average deposit for the year 2003-04 were Rs.1320.46 lacs only which clearly shows the small volume of the business. It is unbelievable that the petitioner was not having the knowledge of the financial status of Indira Priyadarshani Mahila Nagarik Sahakari Bank, Raipur. Since the Reserve Bank of India has forwarded its inspection report to the State Government in which the several irregularities have been pointed out and financial status of the bank was also mentioned in the said report. Therefore, it is incorrect to say that no irregularities were committed by the said Bank, as such the major penalty of withholding of pension and gratuity upon the petitioner has rightly been imposed. Therefore, the writ petition may kindly be dismissed. Reliance has been placed on this Court's order dated 25.01.2018 passed in WP No.1337/2005 parties being T. P. Ratre vs State of Chhattisgarh and others.

5. Heard learned counsel for the parties and perused the material available on record.

6. This is an admitted position in this case that the petitioner was initially appointed as Assistant Registrar, Cooperative Societies through the Public Service Commission in the erstwhile State of Madhya Pradesh on 12.02.1982 and was posted at Bilaspur and thereafter he was promoted to the post of Deputy Registrar, Cooperative Societies and was posted at Jagdalpur. Further, the petitioner was promoted as Joint Registrar, Cooperative Societies and was posted as General Manager in the Integrated Co-operative Development Project (ICDP), Sidhi (M.P.). During the period of his service, the petitioner was transferred to different places and during 2004-2005 and 2005-2006, he was posted as Managing Director of C.G. State Cooperative Bank and from 13/04/2006 he joined as Managing Director of Agricultural and Rural Development Bank, Raipur. It is also not disputed that while working as Managing Director of the Agricultural and Rural Development Bank, a complaint was made against the petitioner by the Chhattisgarh Co-operative Bank Employees Federation, Raipur. The higher

authorities asked for the comments on the complaint so made and the petitioner gave his reply to the said complaint, but feeling dissatisfied with the same the petitioner was suspended from service vide order dated 26.10.2006. During the tenure as Managing Director of Agricultural Rural Development Bank, Raipur, an amount of Rs.6,73,52,800/- was received from NABARD. The said amount was deposited in the Indira Priyadarshini Mahila Nagrik Sahakari Bank Maryadit, Raipur a primary cooperative Bank. Unfortunately, the financial transactions of the said bank came to a damaging point. Due to this a loss of amount of Rs.5,77,52,800/- occurred. Meanwhile the petitioner was reinstated from suspension by the order dated 14/11/2007. The Enquiry Report was submitted on 29/8/2011, pursuant to which second Show Cause Notice was served to the petitioner vide letter dated 21/09/2011, where it has been asked that as per the enquiry report petitioner will be demoted and amount will be recovered from the petitioner with interest, with this respect a reply within 7 days was asked. On 21/9/2011 respondent No.2 sent letter to respondent No.3 to lodge a First Information Report against the petitioner for alleged conduct by which financial loss has been incurred to the State, however no such FIR was lodged. Meanwhile, as to file the reply of the second Show Cause Notice, the petitioner made an application asking the respondents authorities to provide him some important documents, based upon which he can make his reply in effective manner, but no such documents were provided to the petitioner. Ultimately, vide impugned order dated 15/2/2012, a major punishment of non payment of Pension and Gratuity has been imposed against the petitioner.

7. Learned counsel for the petitioner strongly objected on this ground that the petitioner demanded some more documents for his effective reply to show cause notice, but no document was given to him and straightway the impugned order has been passed.

8. This Court on 22.09.2021 sought the respondents to file additional affidavit and address the Court on the following questions:-

"1) Whether before passing the order under Rule 9 of Chhattisgarh Civil Services (Pension) Rules, 1976, opportunity of hearing is required to be afforded to the petitioner in order to withhold his pension ?

2) Whether the pension includes gratuity as well as leave encashment as by the impugned order (Annexure P/1), along with pension, gratuity and leave encashment has also been directed to be withdrawn to the full extent ?

3) Whether Proviso to Rule 9 of the Rules of 1976 requiring consultation of Public Service Commission is mandatory and whether the copy of the consultation given by the Public Service Commission is required to be supplied to the delinquent before passing an order under Rule 9(1) of the Rules of 1946 ?"

9. The respondent State filed affidavit in compliance of the order dated 22.09.2021 and answered the aforesaid questions stating therein that Rule 9 of the Chhattisgarh Civil Services (Pension) Rules, 1976 empowers the Governor of

the State to withhold the pension. The reading of the Rule 9 (1) clearly provides that the power would become available and exercisable only in the event a government servant is found guilty of grave misconduct in any departmental or judicial proceedings during the period of his service. Therefore, the provision can be safely said to be a consequential penal action after conclusion of any departmental or judicial proceedings. In Such event when the Departmental proceeding is initiated and the concerned Government Employee is afforded full and proper opportunity of hearing to raise the defense and upon completion of the proceeding when the Government Employee is held to be guilty, then in such event where the concerned Government Employee superannuates during the pendency of the Departmental Proceedings, as a mode of punishment, Rule 9 of the Rules, 1976 becomes applicable and for such imposition of punishment/penalty no further opportunity of hearing either by way of Show Cause Notice or any other proceeding would be required as already ample opportunity was already provided to the concerned Government Employee. In that view of the matter, no opportunity is required for invoking Rule 9 of the Rules 1976. As regards the second question as to whether pension includes gratuity as well as leave encashment, it is submitted that under the definition Clause vide Rule 2 (n) of the Rules, 1976 the word "pension" has been defined which includes gratuity, as such the pension as per the definition under the Rules do not provide for the leave encashment. However, in the instant case the impugned order provided for the withholding of the pension, gratuity and the leave encashment of the petitioner. The withholding of the leave encashment is governed by the Chhattisgarh Civil Services (leave) Rules, 2010 and vide clarification dated 05.08.1989 issued by the Finance Department, it has been provided that where the concerned Government Employee is found guilty for some financial irregularities and some recovery is established against such Government Employee in such event the amount payable under leave encashment can be withheld. The other query in respect of the proviso of Rule 9 of Rules, 1976 is concerned, it is submitted that the proviso to Rule makes it mandatory for consultation from the Public Service Commission before issuance of order under Rule 9 of Rules, 1976 but it nowhere provides that the opinion of the Public Service Commission is required to be supplied to the delinquent. However, it is submitted that the opinion obtained from the Public Service Commission becomes part of the record and therefore, the delinquent is at liberty to obtain the same from the department if so required.

10. The respondent PSC also filed affidavit in compliance of the order dated 22.09.2021 and answered the aforesaid questions in the following manner:-

"4. That, while answering the question no. 1, it is most humbly submitted that under Rule 9 of the Chhattisgarh Civil Services (Pension) Rules, 1976, right has been granted to the Governor to withhold or withdraw pension, however, the rule does not contemplate providing opportunity of hearing to the petitioner in order to withhold his pension. It is further most humbly submitted that this Hon'ble Court in Writ Petition No. 1337/2005 T. P. Ratre v/s State of Chhattisgarh and

Others., has held in para 25 that the petitioner is not entitled for third opportunity of hearing/show cause notice while cutting the pension and exercising the power under Rule 9(1) of the Rules of 1976 by the Council of Ministers.

6. That, while answering the question no. 2, it is most humbly submitted that pension includes gratuity as per Rule 3(n) of the Chhattisgarh Civil Services (Pension) Rules, 1976, however, the pension does not include leave encashment.

8. That, while answering the question no. 3, it is most humbly submitted that proviso to Rule 9 of the Rules of 1976 clearly stipulates that the State Public Service Commission shall be consulted before any final orders are passed, however, the rules do not prescribe for supplying copy of consultation given by the State Public Service Commission to the delinquent employee before passing an order under Rule 9(1) of the Rules of 1976."

11. The petitioner has filed additional document (Annexure-P/19), which is the statement of General Manager of Chhattisgarh State Cooperative State Agricultural and Rural Development Bank, Raipur and has contended that it is clear from the statement of Mr. B. P. Sahu that the Managing Director has power to open bank account in other bank and he admitted in his cross

12. The petitioner has also filed reply of the Presiding Officer dated 15.11.2010 (Annexure-P/14). The relevant contents of the said reply are as under:-

13. In the enquiry report 29.08.2011 (Annexure-P/15), the Enquiry Officer observed that ".....प्रेस विज्ञप्ती दैनिक नवभारत, दैनिक भास्कर दिनांक 03.08.2006 में इंदिरा प्रियदर्शनी महिला नागरिक सहकारी बैंक रायपुर के खातेदारों द्वारा राशि आहरण करने हेतु हडकंप संबंधि समाचार प्रकाशित होने का उल्लेख है।

14. It is clear from the documents that the petitioner deposited the amount at Indira Priyadarshini Bank on 28.07.2006, but the Enquiry Officer or Department did not file any document regarding publication of any news at that time with respect to irregularities committed, whereas the news was published in newspapers on 03.08.2006.

15. It is an admitted position that the petitioner demanded various documents to file his effective reply but the respondents did not consider his application/representation and straightway impugned order (Annexure-P/1) was passed. It is clear from Annexure-P/14 that the petitioner has right to open any new bank account in any other bank.

16. The respondents have filed affidavit with regard to the query made by this Court stating therein that as per Rule 9 of the Chhattisgarh Civil Services (Pension) Rules, 1976, right has been granted to Governor to withhold or withdraw pension, however rule does not contemplate providing opportunity of hearing to the petitioner in order to withhold his pension.

17. It is an admitted position that on 21.09.2011, second show cause notice with enquiry report was issued to the petitioner vide Annexure-P/15), the contents of

which are as under:-

प्रति,

Thereafter the petitioner filed application on 28.09.2011 requesting for supply of some relevant documents, but his application was not considered and thereafter straightway the impugned order was passed on 15.02.2012, whereby the major punishment was imposed against the petitioner, the operative part of this order is as under:-

18. The Hon'ble Supreme Court in the matter of Iqbal Singh (supra) held in para 5 as under:-

"5. The decision of this Court in M. Narasimachar's case (supra) on which strong reliance has been placed on behalf of the appellants is of no assistance to them as the point as to whether an opportunity to show cause was to be afforded to a Government servant before applying a cut in his pension in view of the principle of natural justice embodied in the well known maxim audi alteram partem was never urged or gone into in that case. Furthermore as pointed out by Palekar, J. while speaking for the Court in K. R. Erry & Sobhag Rai Mehta's case (supra) the question whether pension is a bounty or property did not arise in the former case. The present case is, in our , opinion, fully covered by the judgment of this Court in K. R. Erry & Sobha Rai Mehta's case (supra)."

19. The Hon'ble Supreme Court in the matter of Saroj Kumar Sinha (supra) held in paras 28, 29, 30 & 32 as under:-

"28. An Enquiry officer acting in a quasi judicial authority is in the position of an independent adjudicator. He is not supposed to be a representative of the department/disciplinary authority/ Government. His function is to examine the evidence presented by the department, even in the absence of the delinquent official to see as to whether the unrebutted evidence is sufficient to hold that the charges are proved. In the present case the aforesaid procedure has not been observed. Since no oral evidence has been examined the documents have not been proved, and could not have been taken into consideration to conclude that the charges have been proved against the respondents.

29. Apart from the above by virtue of Article 311(2) of the Constitution of India the departmental inquiry had to be conducted in accordance with rules of natural justice. It is a basic requirement of rules of natural justice that an employee be given a reasonable opportunity of being heard in any proceeding which may culminate in a punishment being imposed on the employee.

30. When a department enquiry is conducted against the Government servant it cannot be treated as a casual exercise. The enquiry proceedings also cannot be conducted with a closed mind. The enquiry officer has to be wholly unbiased. The rules of natural justice are required to be observed to ensure not only that justice is done but is manifestly seen to be done. The object of rules of natural

justice is to ensure that a government servant is treated fairly in proceedings which may culminate in imposition of punishment including dismissal/removal from service.

32. The affect of non disclosure of relevant documents has been stated in Judicial Review of Administrative Action by De Smith, Woolf and Jowell, Fifth Edition, Pg.442 as follows:

"If relevant evidential material is not disclosed at all to a party who is potentially prejudiced by it, there is prima facie unfairness, irrespective of whether the material in question arose before, during or after the hearing. This proposition can be illustrated by a large number of modern cases involving the use of undisclosed reports by administrative tribunals and other adjudicating bodies. If the deciding body is or has the trappings of a judicial tribunal and receives or appears to receive evidence ex parte which is not fully disclosed, or holds ex parte inspections during the course or after the conclusion of the hearing, the case for setting the decision aside is obviously very strong; the maxim that justice must be seen to be done can readily be invoked."

20. Applying the aforesaid principles in the present case as well, it is clear from the documents filed by the petitioner that the notice was issued to the petitioner for his reply and when he asked some documents with regard to the same by filing application on 28.09.2011, the respondent authorities did not consider his application and straightway the impugned order was passed on 15.02.2012 imposing major punishment of withholding of pension and gratuity. It is also clear from the notice dated 21.09.2011 that this notice was given for padavanat (demotion) and the impugned order imposing major punishment of padchyut (dismissal) was passed. It is also clear that no document was supplied to the petitioner and he could not file any reply and thereafter straightway the impugned order was passed. Thus, the action of the respondents is against the principle of natural justice in light of the Hon'ble Apex Court's judgments. Therefore, considering the facts and circumstances of the case, the impugned order dated 15.02.2012 (Annexure-P/1) is hereby set aside with all consequential benefits. However, the respondents are at liberty to proceed further, if they so desire, after providing the required documents to the petitioner. The petitioner shall also file application seeking the required documents in this regard and thereafter the Competent Authority after considering the reply of the petitioner and providing the necessary documents to the petitioner may pass final order in accordance with law.

21. The writ petition stands allowed. No order as to costs.